

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

Plaintiff,

v.

ORDER

09-cv-170-bbc

RICK RAEMISCH, PETER HUIBREGTSE,  
GARY BOUGHTON, ELLEN RAY,  
TOM GOZINSKI, WELCOME ROSE,  
AMY SMITH, HELLEN KENNEBECK,  
KATHRYN ANDERSON, LARRY PRIMMER,  
JANA JUERGENS, MONICA HORNER,  
TRISHA LANSING, NANCY SALMON,  
ELLEN RAY, C. BEERKIRCHER,  
THOMAS TAYLOR, DAVID GARDNER,  
LT. BOISEN, BRIAN KOOL, TIM HAINES,  
CRAIG TOM, LT. HANFIELD, JOSH BROWN,  
H. BROWN, W. BROWN, SGT. FURER,  
CO NEIS, SGT. CARPENTER,  
SGT. BOARDMAN, SGT. BLOYER,  
COII JONES, COII JOHNSON, CO HULCE,  
COII KARNOPP, R. STARKEY,  
SGT. WALLACE, COII ECKT, COII EWING,  
D. ESSER, M. SCULLION, JEROMEY CAYA,  
JENNIFER SICKINGER, JOAN WATERMAN,  
WENDY THOMPSON, SGT. TREFT,  
SGT. COOK and JOHN DOES,

Defendants.  
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On April 1, 2009, I denied plaintiff Titus Henderson's request to proceed in forma pauperis under § 1915(g), finding that he was not in imminent danger at the time he filed this lawsuit. I allowed him until April 22, 2009 to pay the filing fee in the amount of \$350. Because plaintiff failed to pay the filing fee, his case was closed on April 29, 2009. On May 27, 2009, I denied his motion for reconsideration of the April 1 order.

Now before the court is plaintiff's notice of appeal. Because he has not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal. I must deny that request because plaintiff has struck out under 28 U.S.C. § 1915(g) and has not shown that he is in imminent danger of serious physical injury.

Because I am certifying plaintiff's appeal as not having been taken in good faith, plaintiff cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), including a statement of issues that plaintiff intends to present on appeal. Also plaintiff's motion must be accompanied by a copy of this order. Plaintiff should be aware that these documents should be filed in addition to the notice of appeal he has previously filed. If plaintiff does not file a motion requesting review of this order, the court of appeals may not address this court's denial of leave to proceed in forma pauperis on appeal. Instead, it will require

plaintiff to pay the entire \$455 filing fee before it considers his appeal. If plaintiff fails to pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal and order this court to arrange for collection of the fee from plaintiff's prison account.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal, dkt. #5, is DENIED. I certify that plaintiff's appeal is not taken in good faith. The clerk of court is directed to insure that plaintiff's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial record.

Entered this 19<sup>th</sup> day of June, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge